

REMARKS

Claims 1-48 were pending and remain unchanged.

I. Rejection of Claims 1-14 and 16-47 Under 35 U.S.C. § 102(e)

Claims 1-14 and 16-47 have been rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,223,294 to Desenne et al. ("the '294 patent"). Applicants respectfully traverse.

Applicants had previously submitted a Declaration of Linda Foltis under 37 C.F.R. § 1.131. As stated previously, Applicants believe that the '294 patent is not a valid reference under 35 U.S.C. § 102(e), as Applicants were in possession of the present invention before the earliest effective filing date of the '294 patent (that is, before December 21, 2001).

The Office Action alleges that this Declaration is not effective to overcome the rejections under s 102(e), because it was not signed by all of the inventors (Office Action, page 3).

Accordingly, attached is a copy of a Declaration of Janus Jachowicz, Roger L. McMullen, Jr., Linda C. Foltis, Jean Karolak, Steve Orofino, Blanca Gomez and Ellen S. Botschka Under 37 C.F.R. § 1.131. Applicants are making their best efforts to obtain all seven signatures necessary, and will submit executed versions as soon as they are available.

The Declaration attests to, *inter alia*, the following: As used throughout the disclosure of the present invention, and in Exhibit A of the Declaration, the abbreviation "DMPMA" refers to dimethylaminopropylmethacrylamide. The particular polymers described in Exhibit A and disclosed to L'Oreal in this time period are vinyl pyrrolidone/DMPMA/quaternized dimethylaminopropylmethacrylamide, where the quaternized portion was made by reacting DMPMA with dodecyl chloride.

The Office Action alleges that the “ACP 1234” polymer “appears to correspond to [the] last polymer drawn to chloride species claimed in claim 8, which is vinylpyrrolidone (VP)/dimethylaminopropylmethacrylamide (DMAPMA)/lauryldimethylmethacrylamidopropylammonium chloride terpolymer” (Office Action, page 3). The Office Action goes on to allege that the Declaration “failed to show that applicants’ [sic] completed prior to the date of the reference all of the species shown in the reference” (*Id.* at page 4).

However, Applicants respectfully submit that the Declaration of the inventors clearly establishes that Applicants had possession of the invention as claimed in the ‘294 patent before the earliest priority date of the ‘294 patent. It is well-established that a species will anticipate a claim to a genus, and further that a reference that clearly names the claimed species anticipates the claim no matter how many other species are named. *See* MPEP § 2131.02, *In re Slayter*, 125 U.S.P.Q. 345, 347 (C.C.P.A. 1960); *In re Gosteli*, 872 F.2d 1008, 10 U.S.P.Q.2d 1614 (Fed. Cir. 1989). Thus, because the material provided to L’Oreal prior to the priority date of the ‘294 patent anticipates, *inter alia*, the species recited in claim 8, the ‘294 is thus not a valid reference with regard to the presently pending claims under 35 U.S.C. § 102(e).

For at least these reasons, Applicants respectfully submit that the rejection of these claims under 35 U.S.C. § 102(e) has been overcome and should be withdrawn.

II. Rejection of Claims 1-48 Under 35 U.S.C. § 103(a)

Claims 1-48 have been rejected under 35 U.S.C. § 103(a) as being obvious in view of the combination of the ‘294 patent, U.S. Patent No. 6,540,791 (“the ‘791 patent”), and WO

01/41722 whose English equivalent is U.S. Patent No. 6,984,250 ("the '250 patent"). Applicants respectfully traverse this rejection

First, as stated above, Applicants respectfully submit that the '294 patent is not a valid reference over the pending claims. For at least this reason, the rejection cannot stand, as the claims are patentable over the '791 patent and the '250 patent, both alone or in combination. For at least these reasons, Applicants respectfully submit that this rejection has been overcome and should be withdrawn.

In light of the above remarks, it is believed that the claims are in condition for allowance, early notice of which is earnestly solicited. Should any outstanding issues remain, the Examiner is invited to contact Applicants' attorneys at the telephone number listed below.

No fees, other than the fees for extension of time, are believed to be due for the filing of this Response. However, the Director is hereby authorized to charge any fees that may be associated with this filing, or credit any overpayment, to Deposit Account No. 03-1250, Reference No. FDN-2805, Customer No. 43,309.

Respectfully submitted,

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Enclosures